

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of

Federal Communications Commission
Office of Secretary

Implementation of Section 304 of the
Telecommunications Act of 1996

CS Docket No. 97-80

Commercial Availability of
Navigation Devices

To the Commission:

REPLY COMMENTS OF VIACOM INC.

Viacom Inc. ("Viacom") hereby submits its reply comments in response to the comments filed in connection with the *Notice of Proposed Rule Making*, FCC 97-80 (released February 20, 1997) (the "*Notice*") in the above-captioned proceeding. The objective of this proceeding is to implement Section 629 of the Communications Act.

I. BACKGROUND.

Viacom, through its cable networks,¹ UPN broadcast television network and syndicated programming,² is a program supplier and, through its broadcast television stations,³ a program

¹ Viacom wholly owns several basic cable television networks, including MTV: Music Television, M2: Music Television, VH1, Nickelodeon/Nick at Nite, and Nick at Nite's TV Land, and the premium channels Showtime, The Movie Channel and Flix. Viacom also owns SET Pay Per View. Additionally, Viacom co-owns basic cable networks, including USA Network, Comedy Central, Sci-Fi Channel and All News Channel, and premium cable network Sundance Channel.

² Viacom owns Paramount Pictures and is majority owner of Spelling Entertainment Group.

³ Viacom is the direct or indirect licensee of 11 television stations.

distributor. In its comments, filed on May 15, 1997, Viacom urged the Commission to adopt regulations implementing Section 629 of the Act which will encompass the following principles:

- That digital navigation devices, specifically set-top boxes, which must be made "commercially available" pursuant to Section 629 of the Act, have commercial *appeal* to consumers.
- That the Commission mandate that commercially available set-top boxes be universal so that they are *portable* —able to adapt to any MVPD service available in all geographic areas of the country— and *interoperable* —able to function with any MVPD service in the country, be it cable, terrestrial digital television ("DTV"), DBS, MMDS or LMDS.
- That MVPD ability to maintain control over the security portion of any navigation device be of overriding importance in any set of regulations governing set-top boxes.
- That the issue of security and signal piracy, however, not be used as a pretext for abstaining from adopting regulations that open the set-top box market to commercial retailers.
- That the preferred means of insuring signal security while at the same time promoting commercial availability of set-top boxes be segregation of the security functions of boxes from the non-security functions. Boxes must be capable of supporting, via standard interface connections, the conditional access systems provided by all MVPDs, which would continue to be the sole party responsible for the security of their systems and the sole party with possession of the encryption keys.
- Finally, but importantly, that digital boxes, particularly those to be employed in accessing terrestrial DTV during the analog-to-digital transitional period, be particularly subject to Commission mandates regarding universal design, including

segregated security systems with common interface connections. The standards for universal boxes should be established by industry agreement, but the Commission should set such standards if no industry agreement has been reached by a date no later than nine months from the adoption date of the Report and Order resolving this proceeding.

Viacom's perspective as an owner of cable television networks, a broadcast television network and syndicated programming holdings, as well as broadcast television outlets, is unique among all commenters participating in this proceeding. Viacom has consistently called for open access to MVPDs and seeks a regulatory scheme that promotes the genuine and fair access of subscribers to all programming whether it be affiliated or unaffiliated with those entities controlling the means of distribution. Viacom is heartened by the comments of the majority of parties who similarly envision, albeit with varying approaches, an open-architecture set-top box that is portable, interoperable and, above all, pro-consumer.

Viacom believes that the statutory directives of Section 629 of the Act and the record developed in this proceeding support the principles set forth in Viacom's comments. In these reply comments, Viacom reiterates and/or propounds the following:

- (1) that the "commercial availability" provision of Section 629 of the Act means that as a practical matter set-top boxes must be universal: portable *and* interoperable;
- (2) that the standards governing the universality of set-top boxes must be determined by industry agreement by a date certain and, if that date passes, by the Commission in consultation with private standard-setting organizations;
- (3) that MVPDs must be allowed to provide to subscribers set-top boxes containing integrated security functions, so long as the commercial availability of security-segregated set-top boxes is fairly disclosed to the subscriber;

- (4) that the security concerns of MVPDs must be of utmost priority in establishing set-top box regulations, but that they must not preclude the development of a commercially available, universal box; and
- (5) that the sunset provision of Section 629 must not be deemed to be satisfied until there is robust competition among *all* MVPDs nationwide.

II. THE "COMMERCIAL AVAILABILITY" PROVISION OF SECTION 629 MEANS THAT BOXES MUST BE UNIVERSAL: PORTABLE AND INTEROPERABLE.

It is true, as most commenters note, that Section 629 does not expressly direct the Commission to implement regulations that mandate the portability and interoperability of set-top boxes and other navigation devices. Yet, Viacom submits that in order to fulfill the statutory mandate that the Commission "adopt regulations to assure the commercial availability to consumers" of set-top boxes, the Commission must adopt rules that promote the commercial *viability* of such devices. A set-top box that can be used in connection with only one specific MVPD in only one specific local franchise area will entice few consumers to invest in such a product. And scant consumer interest in purchasing such a product will, in turn, provide little incentive to manufacturers and/or to retailers to make set-top boxes commercially available.

Many of the commenters support the goals of portability and/or interoperability or note that the market is already moving toward those concepts.⁴ It is the means and the timing for reaching those goals where commenters diverge. Of one view are the consumer premises equipment ("CPE") retailers, including the Consumer Electronics Retailers Coalition ("CERC")⁵ and Circuit City Stores, Inc. ("Circuit City")⁶ and television receiver manufacturer Zenith

⁴ See Comments of Time Warner Entertainment Company, L.P. ("Time Warner"); Consumer Electronics Retailers Coalition ("CERC"); National Cable Television Association ("NCTA"); Circuit City Stores, Inc. ("Circuit City"); Tandy Corporation ("Tandy"); and Zenith Electronics Corporation ("Zenith").

⁵ CERC Comments at 8.

⁶ Circuit City Comments at 4-5.

Electronics Corporation ("Zenith"),⁷ which urge the Commission to mandate portability in the Report and Order resulting from this proceeding. Tandy Corporation ("Tandy"),⁸ a CPE retailer, and the Consumer Electronics Manufacturers Association ("CEMA"), a CPE manufacturers group, each propose that the Commission require that all set-top boxes be portable by specified dates. However, these commenters view interoperability as an objective that is to be pursued in the marketplace or in subsequent Commission proceedings.

Similarly, other commenters, such as set-top box manufacturers General Instrument Corporation ("General Instrument")⁹ and Scientific-Atlanta, Inc. ("Scientific-Atlanta"),¹⁰ urge the Commission to take a marketplace approach with respect to the dual concepts of portability *and* interoperability, particularly in light of the industry's own, voluntary moves toward a more portable and interoperable environment. Some of these commenters argue that prescribed portable and interoperable features will lead to more expensive set-top boxes and will chill innovation and new digital services. Specifically, Scientific-Atlanta argues that an interoperability requirement would not work for DBS, MMDS or today's cable systems, because competing providers use different modulation schemes, protocols and technology, and a mechanism accommodating those differences would be cost-prohibitive.¹¹ Moreover, Scientific-Atlanta suggests that any definition of "portability" and "interoperability" adopted by the Commission will stifle innovation and new digital services because the services and technologies demanded by the consumer in the digital world are not known today.¹²

However, cable operator/programmer Time Warner Entertainment Company, L.P. ("Time Warner") views the availability of a single, interoperable digital box as one in which "all affected parties would benefit,"¹³ and one in which, therefore, the Commission should facilitate ongoing

⁷ Zenith Comments at 12.

⁸ Tandy Comments at 8.

⁹ General Instrument Comments at 29.

¹⁰ Scientific-Atlanta Comments at 16-18.

¹¹ Scientific-Atlanta Comments at 19-20.

¹² *Id.* at 21.

¹³ Comments of Time Warner at 33.

industry efforts to develop a basic architecture. Zenith states that "[i]n a perfect world," the consumer could purchase a single, portable, interoperable set-top box, but that such universality may be a reality only in the long term.¹⁴

Viacom agrees with commenters which call for the Commission to establish requirements with respect to portability in this proceeding and, in particular, endorses the proposals of Tandy and CEMA, which propound that such requirements be mandatory as of a date certain.¹⁵ Yet, Viacom disagrees with the notion that interoperability requirements be left for another day. Set-top boxes that are merely portable, and not interoperable, obligate American television viewers to purchase a second and third set-top box when they switch from one MVPD service to another or add another MVPD service. The potential for additional set-top box clutter and expense also dissuades subscribers from changing from one MVPD service to another, thereby inhibiting inter-MVPD competition.

Moreover, deferring to the marketplace or to another Commission proceeding the matter of interoperability fails to advance the ultimate universality of set-top boxes, an objective contemplated by Congress as evidenced in the sunset provision of Section 629 of the Act. That section directs the Commission to terminate set-top regulations only when, among other things, the Commission determines that "the market for the multichannel video programming distributors is fully competitive. . . ."¹⁶ In sum, Viacom rejects the hands-off approach to portability and interoperability advocated by some commenters and commends the pro-interoperability stance taken by Time Warner and Zenith, but advocates that portability and interoperability be mandated.

Further, the arguments of some commenters —that mandated interoperability would increase set-top box costs and impair technological advances— are without merit. With respect to the cost argument, Viacom maintains that the incremental costs in producing a portable and

¹⁴Zenith Comments at 11-12.

¹⁵ The specific timetables offered by those commenters are discussed in Section III, *infra*.

¹⁶ Section 629(e) of the Act; 47 U.S.C. §549(e).

interoperable box—which can be employed by a viewer to access one, different or many MVPD services at one time, all with a single box— will be far less expensive in the end to the consumer than purchasing a second or third different set-top box when changing to the services of another MVPD and far less expensive than purchasing a second or third box when adding the services of an additional MVPD.¹⁷ And as for the chilling innovation argument, Section 629(c) of the Act expressly provides relief in such circumstances by allowing for Commission waiver of a regulation upon an appropriate showing that such waiver is necessary to "assist the development or introduction of a new or improved" multichannel video programming or other service offered over MVPD systems, technology or products.¹⁸

Moreover, in adopting the concepts of portability and interoperability, the Commission need not define them in a technical manner so as to stifle technological advances in digital. Rather, the Commission should simply define the principle of "portability" as the ability to employ a set-top box purchased from a retailer in every part of the country and the principle of "interoperability" as the ability to employ the same set-top box in connection with the services of every MVPD system. The technical standard-setting to fulfill these definitions will be left for the industry, unless, as discussed below, the industry is unable to reach agreement.

Given the acknowledged industry movement toward portability and interoperability, the Commission should establish deadlines for their implementation sooner rather than later. Such features will inure to the benefit of consumers, who will have access to a wide variety of program offerings, not only those chosen or favored by the MVPD controlling the set-top box in the home.

¹⁷ Additionally, to the extent that MVPDs offer their own proprietary boxes to subscribers within the limits set by Commission rules, as discussed in Section IV, below, those boxes, if not interoperable and portable (and, presumably, less expensive than other boxes sold at retail) simply give consumers a choice of options and price points.

¹⁸ Section 629(c) of the Act; 47 U.S.C. §549(c).

III. THE STANDARDS FOR GOVERNING THE UNIVERSALITY OF SET-TOP BOXES MUST BE DETERMINED BY INDUSTRY AGREEMENT BY A DATE CERTAIN OR THE STANDARDS MUST BE DETERMINED BY THE COMMISSION IN CONSULTATION WITH PRIVATE STANDARD-SETTING ORGANIZATIONS.

The portable and interoperable set-top box envisioned by Viacom, as explained in its comments, will enable consumers to freely choose to subscribe to the system of any multichannel video programming service, to freely elect to disconnect from one system and switch to another, and even to freely subscribe to more than one MVPD service at a time. Moreover, with such a universal box, consumers could move to another state or region of the country and use the same box to access all MVPD services in the new locale. To achieve universality, the box should contain at least two interfaces: one which will accommodate an MVPD's non-security functions, including a proprietary Electronic Program Guide ("EPG"), if any (but which would not preclude the use of other EPGs not proprietary to the MVPD, the hardware or software for which could be attached through a standard interface), and one which will accommodate an MVPD's conditional access system, consisting of a smart card and/or a separated security module. Another interface could be used to connect a tuner/demodulation module to the set-top box to take into account modulation standards used by different MVPDs. Each module of this universal box should interface with the MVPD's EPG and security system via connectors.

For the universal box to become a reality, however, there must be assurances that the connectors are standardized for use by all MVPDs. Standardization of the set-top box was clearly contemplated by Section 629 of the Act: "The Commission shall, *in consultation with appropriate industry standard-setting organizations*, adopt regulations to assure the commercial availability to consumers" of set-top boxes and other navigation devices."¹⁹

No commenter disputes the need for standards. What commenters debate is the role to be played by the Commission in the development of standards. In its comments, Viacom

¹⁹ Section 629(a), 47 U.S.C. §549(a). (Emphasis added.)

proposed that the Commission proscribe the production for retail sale of any digital navigation device —particularly those devices containing digital-to-analog converters for use with terrestrial digital television— that is not portable and interoperable. In this way, Viacom stated in its comments, the Commission would not be compelled to itself adopt standards, but could allow the industry to do so in order to abide by the Commission proscription. The technical parameters of a universal box would be generated by and agreed to by industry-wide bodies, not the Commission. However, Viacom urged that the Commission itself undertake to establish set-top box standards, in consultation with "appropriate standard-setting organizations," if by a date certain the industry has failed to select standards. The date certain proposed by Viacom in its comments, at least with respect to set-top digital-to-analog converters for use with terrestrial DTV, nine months from the adoption date of the Report and Order resolving this proceeding.

The principle of setting a date certain is amenable to many commenters, all of whom agree that the Commission should refrain from setting standards. General Instrument agrees with the proposal set forth in the *Notice*, which states that the Commission could set "performance criteria that must be met by a date certain,"²⁰ but suggests that such a date be phased in, with schedules tailored to the type of navigation device.²¹ General Instrument proposes that the earliest deadline —two years— should be set for cable modems and that within the two-year phase-in period MVPDs "would be encouraged" to make other types of equipment commercially available.²² NCTA, while requesting that the Commission defer consideration of mandated interface standards until private, standard-setting bodies develop the technical parameters for such a standard, also agrees that there should be a phased-in requirement for retail availability of set-top boxes, as proposed in the *Notice*.²³ CERC states, and Circuit City agrees, that because the private sector has "already accomplished so much," the Commission need neither engage in

²⁰ *Notice* at ¶52.

²¹ General Instrument Comments at 62, 65.

²² *Id.* at 65.

²³ NCTA Comments at 34.

nor supervise the setting of standards.²⁴ Yet, the Commission, according to the CERC, must have a "clear purpose and plan" to achieve specific results "by clearly stated dates."²⁵ Indeed, as discussed further below, CERC proffers milestones one and two years out. Tandy requests that by July 1, 1998, all set-top boxes must be portable and, thereby, commercially available.²⁶ CEMA and Zenith suggest that it may be necessary for the Commission to establish rules requiring "timely disclosure" of physical and logical interfaces.²⁷

If the Commission is to "assure" the commercial availability of set-top boxes and other navigation devices, standards must be installed quickly. The standards-setting discussions that have ensued as a result of various voluntary standards-setting efforts within the industry, *e.g.*, digital cable specifications and cable modems, are laudable and should be encouraged to flourish under Section 629. Indeed, manufacturers and cable operators have been actively involved in the development of a National Renewable Security System ("NRSS"), a joint CEMA/National Cable Television Association ("NCTA") effort, "that should facilitate the widespread commercial availability of navigation devices" by establishing a common interface for security mechanisms in set-top boxes.²⁸

Nevertheless, absent a deadline for adopting standards that will render set-top boxes commercially available through isolated security mechanisms, as is true today with analog boxes, an installed base of commercially unavailable *digital* boxes will grow to the point where the economics of replacing such boxes will render Section 629 meaningless. And without industry-wide standards, one MVPD could fill the void and create *de facto* standards with closed, proprietary technology. This is particularly true now, with the advent of digital television, both terrestrial and that provided by MVPDs. Because the Commission just recently established a

²⁴ CERC Comments at 5; Circuit City Comments at 27.

²⁵ CERC Comments at 5.

²⁶ Tandy Comments at 9-10.

²⁷ CEMA Comments at 13; Zenith Comments at 12.

²⁸ Time Warner Comments at 11; CEMA Comments at 4-5.

timeline for the implementation of DTV by every broadcast television station in the country²⁹ and because digital cable set-top boxes have not yet been rolled out,³⁰ Viacom believes it is urgent that the Commission establish a date certain by which the industry must agree upon interface standards —within 12 to 18 months of the Report and Order issued in connection with this proceeding.³¹ If that Commission-imposed deadline passes without an industry agreement, the Commission either must pressure the industry to settle upon standards, as was done in the DTV proceeding with respect to the Grand Alliance standard,³² or the Commission itself must determine standards, in consultation with private standard-setting groups, that will make commercially available digital set-top boxes, but in consultation with private, standard-setting groups. The possibility of active government participation in standards-setting should motivate the industry to rapidly settle upon standards by a date certain.

IV. ESTABLISHING STANDARDS FOR COMMERCIALY AVAILABLE SET-TOP BOXES SHOULD NOT FORECLOSE MVPDs FROM OFFERING SECURITY-INTEGRATED BOXES DIRECTLY TO THEIR SUBSCRIBERS.

Establishing standards sooner rather than later should not, as General Instrument intimates, produce "distressing" changes³³ or, as CEMA and Zenith suggest, make MVPD investments in their existing boxes "obsolete" and lead to "sudden set-top obsolescence."³⁴ So long as commercially available, *i.e.*, portable and interoperable, set-top boxes can be purchased by the consumer at a retail outlet or through an entity unaffiliated with the MVPD, Viacom believes that all MVPDs should be permitted to offer to their subscribers any configured box — within certain parameters discussed below— whether the security is integrated or segregated.

²⁹ See *Fifth Report and Order* in MM Docket No. 87-268, FCC 97-116 (released April 21, 1997) and *Sixth Report and Order* in MM Docket No. 87-268, FCC 97-115 (released April 21, 1997).

³⁰ See Tedesco, Richard, "Digital boxes: wait 'till next year," *Broadcasting & Cable*, May 12, 1997 at 84.

³¹ Although Viacom suggested in its comments a deadline of nine months from the release date of a Report and Order emanating from this proceeding, Viacom would endorse this longer period of time.

³² See *Fourth Report and Order* in MM Docket No. 87-268, FCC 96-493 (released December 27, 1996); see also Stern, Christopher, "MPAA memo stands firm on digital TV standard," *Daily Variety*, November 14, 1996, at 1.

³³ General Instrument Comments at 68 (quoting Darius W. Gaskins, Jr. and James M. Voytko, "Managing the Transition to Deregulation," 44 *Law and Contemporary Problems* (Winter 1981) at 20).

³⁴ CEMA Comments at 15; Zenith Comments at 9.

CERC disagrees, arguing that even the devices supplied by the system operator should be standardized, pursuant to NRSS specifications, as discussed above. "Otherwise," CERC contends, "it is unlikely that system operators, in the design of their systems, will give adequate support to competitively supplied devices in feature design and disclosure, or consumer information or marketing."³⁵

If commercially available set-top boxes are truly portable and interoperable, MVPDs will compete all the more to obtain and maintain subscribers, who will be free with their portable and interoperable set-top boxes, to change MVPDs or add MVPDs by simply inserting modules. Accordingly, MVPDs will seek to offer to subscribers who have purchased set-top boxes from a retailer all box-compatible features offered to subscribers who are leasing their boxes from the MVPD. As a solution to the potential consumer information problem, Viacom in its comments proposed that the Commission impose a disclosure requirement on MVPDs, such that MVPD-provided literature to consumers will describe the pros and cons of purchasing or leasing a box from the MVPD, as well as the specific local retail availability of portable and interoperable set-top boxes. General Instrument advocates a similar consumer disclosure scheme, one that parallels the current Commission regulation with respect to disclosure of the commercial availability of remote control units.³⁶

Finally, Viacom asserted in its comments that so long as truly portable and interoperable set-top boxes are commercially available, consumers wishing to avoid extra up-front costs inherent in purchasing that type of box may opt to lease or purchase from the MVPD an integrated "uni-purpose" box. More specifically, Viacom now advocates in these reply comments that certain limitations be placed on MVPD sales and leasing of set-top boxes. As for sales, the Commission should prohibit all MVPDs from tying to the purchase of a set-top box any service agreement. In so doing, the Commission would insure that MVPDs are not subsidizing the set-top box costs with their video programming and other services. It is likely

³⁵ CERC Comments at 19-20, note 15.

³⁶ See Section 76.630(d)(2)(iii); 47 C.F.R. §76.630(d)(2)(iii).

that if consumers purchase set-top boxes from their MVPD, at artificially low prices that are subsidized by the purchase of services, those customers would be disinclined to change from one MVPD service to another where the purchase of additional, incompatible equipment were necessitated. If prices are not subsidized, then consumers will recognize up-front the true price they are being asked to pay to the MVPD for its proprietary set-top box and can, on that basis, make an informed judgment as to whether to purchase the MVPD's device or a universal device at retail.

Addressing the sale of proprietary, non-standardized devices in this way does not disadvantage the consumer in that an MVPD can continue to sell its devices on an installment payment basis, but the consumer will be fully informed of the cost of the device and can compare the benefits and disadvantages of purchasing an MVPD's proprietary device or purchasing a portable/interoperable device at retail. Of course, unbundling requires that the costs of a device (whether sold outright or on an installment basis or leased) be separately itemized on a monthly service bill. In addition, both sales, installment sales and leasing must be itemized so as to inform the consumer of the prices or rent being charged for the set-top box.

V. THE SECURITY CONCERNS OF MVPDs MUST BE OF UTMOST PRIORITY IN ESTABLISHING DIGITAL SET-TOP BOX REGULATIONS, BUT THEY SHOULD NOT PRECLUDE THE DEVELOPMENT OF A COMMERCIALY AVAILABLE, UNIVERSAL SET-TOP BOX.

Section 629(b) of the Act expressly prohibits the Commission from prescribing regulations to assure commercial availability which would "jeopardize security" of MVPD programming and other services offered over the MVPD system or which would "impede the legal rights" of a provider of such services to "prevent theft of service."³⁷ Almost every commenter recognizes this statutory protection of the security interests of MVPDs while simultaneously acknowledging the legitimate security concerns of MVPDs. However, no

³⁷ Section 629(b) of the Act; 47 U.S.C. §549(b).

commenter alleges that protection of security would or should preclude the Commission from adopting set-top box regulations.

As the owner of advertising-based cable networks, premium cable networks and a major pay-per-view distributor, Viacom has directly and indirectly suffered substantial financial loss due to signal theft. Under any set of regulations adopted, Viacom re-emphasizes here that the Commission must defer to the security concerns of MVPDs and those who provide programming to MVPDs. Moreover, while Viacom did not expressly so state in its comments, its comments were predicated on advocacy of portability and interoperability standards on a going-forward basis, that is, with respect to terrestrial DTV and cable television. As recognized by the Commission in the *Notice*, digital technology is not as vulnerable to theft as are analog signals.³⁸

Yet, as stated by Tandy, security concerns should not pose "insurmountable barriers" to the commercial availability of set-top boxes.³⁹ Indeed, Viacom, as well as many other commenters, including NCTA, Time Warner, CPE retailers, CEMA and Zenith,⁴⁰ note that the security concerns of MVPDs and programmers could be readily accommodated by segregating the security functions of the digital set-top box from the non-security functions, using a conditional access system such as the NRSS.

VI. THE SUNSET PROVISION OF SECTION 629 MUST NOT BE DEEMED TO BE SATISFIED UNTIL THERE IS ROBUST COMPETITION AMONG ALL MVPDs NATIONWIDE.

The sunset provision of Section 629 of the Act provides that regulations implementing the statute shall cease to apply when the Commission determines that:

- (1) the market for multichannel video programming distributors is fully competitive;
- (2) the market for set-top boxes and interactive communications equipment used in conjunction with MVPD service is fully competitive; and

³⁸ See *Notice* at ¶30.

³⁹ Tandy Comments at 12.

⁴⁰ NCTA Comments at 7; Time Warner Comments at 11-13; CEMA Comments at 17-18; and Zenith Comments at 13-14.

- (3) elimination of the regulations would promote competition and the public interest.⁴¹

The Commission proposes in the *Notice* to read this provision "as flexibly as possible," eliminating set-top box regulation based upon geographic and product markets.⁴²

Many commenters, including General Instrument, DBS/DTH MVPDs PRIMESTAR Partners L.P. ("Primestar") and DIRECTV, Inc./Hughes Network Systems, Inc. ("DirecTV"), and Tandy,⁴³ apparently agree with the Commission's tentative conclusion that any termination of regulations be measured by product market, that is, by cable MVPDs, by DBS MVPDs, and other classes of MVPDs. While NCTA supports the Commission's proposal that relevant submarkets, both geographic and product, should be considered in determining whether the criteria for sunseting regulations for a particular MVPD or particular equipment have been met, it also suggests that MVPDs as a whole, at least in a given geographic market is the relevant market: "The Commission should not slice-and-dice submarkets and relieve some competitors of statutory burdens without taking the same action for other competitors in that market."⁴⁴ And Circuit City requests that the sunset provision be strictly construed and that there be no dilution of the sunset requirements "through creation of contrived submarkets based on specific product categories or geographic markets."⁴⁵

Viacom believes that the sunset provisions should be applied only when there is robust competition among MVPDs and CPE equipment suppliers on a national basis. Therefore, the rules governing commercial availability should not terminate until the Commission makes a careful empirical determination that such competition actually exists.

VII. CONCLUSION.

⁴¹ Section 629(e); 47 U.S.C. §549(e).

⁴² *Notice* at ¶82.

⁴³ General Instrument Comments at 90-91; Primestar Comments at 7; DirecTV Comments at 7-8; and Tandy Comments at 18.

⁴⁴ Comments of NCTA at 43-44.

⁴⁵ Comments of Circuit City at 36-37.

For the reasons stated above and in its initial comments, the Commission should adopt the proposals offered by Viacom in connection with the implementation of Section 629 of the Act.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Edward Schor". The signature is fluid and cursive, with a long horizontal stroke at the end.

Edward Schor, Vice President, Associate General Counsel/Regulatory
Anne Lucey, Counsel/Regulatory

Dated: June 23, 1997